SCS Agency
Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Bowen	Analyst:	Roger Lackey	Bill Number:	AB 27
Related Bills:	See Legislative History	Telephone:	845-3627	Amended Date:	02-17-98
		Attorney:	Doug Bramhall	Sponsor:	

SUBJECT: Minimum Franchise Tax/None For Corps If Actual Dissolution Is Delayed By FTB

____ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _________.

_X_ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

____ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _________.

____ FURTHER AMENDMENTS NECESSARY.

_X_ DEPARTMENT POSITION CHANGED TO Pending.

____ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED ____________ STILL APPLIES.

_X_ OTHER - See comments below.

SUMMARY OF BILL

This bill would provide that a corporation that has filed for dissolution shall not be required to pay the minimum franchise tax for the following income year if the actual dissolution is delayed by requests for additional documentation or adjustments by the Franchise Tax Board.

SUMMARY OF AMENDMENT

The February 17, 1998, amendment added the language regarding corporations that file for dissolution and the minimum franchise tax and deleted language regarding the intent of the Legislature to change the amount of the minimum franchise tax.

EFFECTIVE DATE

This bill would be effective January 1, 1998.

LEGISLATIVE HISTORY

SB 842 (1997), SB 510 (1997), AB 8 (1997), AB 27 (1997), SB 38 (Stats. 1996, Ch. 954), AB 546, AB 3298, AB 3010, AB 3394 (1996); AB 647, AB 744, AB 1098 (1995); AB 411, AB 977, AB 1721, AB 2886, AB 3807 (1993/94); AB 3506, SB 1453 (1992); AB 4275 (1989/90); SB 572 (Stats. 1987, Ch. 1139); AB 1 (Stats. 1971, Ch.1); AB 1175

DEPARTMENTS THAT MAY BE AFFECTED:

____ STATE MANDATE ____ GOVERNOR'S APPOINTMENT

Board Position:	Agency Secretary Position:	GOVERNOR'S OFFICE USE
____ S ____ O ____ SA ____ OUA ____ N ____ NP ____ NA ____ NAR __X__ PENDING	____ S ____ O ____ SA ____ OUA ____ N ____ NP ____ NA ____ NAR DEFER TO ____________	Position Approved ____ Position Disapproved ____ Position Noted ____
Department/Legislative Director Date Gerald H. Goldberg 3/2/98	Agency Secretary Date	By: Date:

(Stats. 1957, Ch. 1127).

SPECIFIC FINDINGS

Existing state law provides that every corporation incorporated in this state, qualified in this state or doing business in this state shall be subject to the minimum franchise tax from the earlier of the date of incorporation, qualification, or commencing to do business within this state, until the effective date of dissolution or withdrawal or, if later, the date the corporation ceases to do business within the limits of the state.

Existing state law requires that a corporation not exempted from taxation by state law which dissolves or withdraws shall pay a tax for its taxable year of dissolution or withdrawal according to or measured by its net income for the income year in which it ceased doing business, unless such income was previously been included in the measure of tax for any taxable year of dissolution or withdrawal. The tax for the taxable year of the corporation's dissolution or withdrawal shall not be less than the minimum tax required by state law.

Existing state law provides that prior to the dissolution of a corporation, the corporation must first obtain a tax clearance certificate from the Franchise Tax Board certifying that the taxes due, if any, for the dissolving corporation have been paid, assumed or guaranteed by bond or otherwise. There are currently two procedures for dissolving corporations.

In the case of a voluntary dissolution where a majority of the stockholders have elected to dissolve a domestic corporation a certificate of dissolution and the request for a tax clearance certificate are delivered to the Secretary of State (SOS). The SOS files the certificate of dissolution and transmits the tax clearance documentation (including the Assumption Form) to the Franchise Tax Board. In this instance, the dissolution is conditional upon the issuance of a tax clearance certificate. The FTB shall either issue the tax clearance certificate or notify the requesting corporation of the amount of tax that must be paid or the amount of bond, deposit, or other security that must be furnished as a condition of issuing the certificate. The FTB shall notify the SOS when all taxes have been paid or secured at which time the corporation shall be dissolved as of the original filing date of the certificate of dissolution was originally filed. Thereafter, the corporation is not subject to the minimum franchise tax for income years beginning on or after the date of the filing.

In the case of a foreign corporation that registered to transact intrastate business in California, liability for the minimum franchise tax continues until certificate of surrender has been filed with the SOS. The SOS may not file on record a certificate of surrender of a foreign corporation until the FTB has issued a tax clearance certificate. The effective date of the certificate of surrender does not relate back to the date the Certificate of Surrender was originally filed with the SOS. Thus, these corporations could be liable for minimum franchise tax for an income year following the income year in which the certificate of surrender was filed.

In the case of involuntary dissolution pursuant to court action, a court may not enter a decree of dissolution until the FTB has issued a tax clearance certificate. In this instance, the dissolution does not relate back to the initiation of court action to dissolve the corporation, but instead is effective only when the court enters a decree of dissolution.

Real estate mortgage investment conduits (REMICs), regulated investment companies (RICs), and real estate investment trusts (REITs) organized as corporations are subject to and required to pay the minimum franchise tax and apply for dissolution in the same manner as a corporation.

This bill would provide that a corporation that files for dissolution shall not be subject to the minimum franchise tax for the income year following the income year in which the dissolution was filed.

This bill would apply only to corporations whose actual dissolution is delayed to the following income year by reason of requests from the FTB for additional documentation or adjustments.

Implementation Considerations

It is unclear if this bill would apply to corporations that filed for dissolution prior to January 1, 1998, but whose dissolutions were delayed until the income year beginning on or after January 1, 1998.

This bill would apply to entities subject to the minimum franchise tax that are organized as corporations such as regulated investment companies and real estate investment trusts. It would also apply to every real estate mortgage investment conduit and a limited liability company taxable as a corporation. It would not affect the tax imposed on limited partnerships, limited liability companies taxable as a partnership, or limited liability partnerships. It is the author’s intent that this bill also apply to these entities. The department’s staff is working with the author’s office to develop the appropriate language.

This bill would provide that a corporation that “files for dissolution” shall not be required to pay the minimum franchise tax for the following income year if the actual dissolution is delayed by requests for additional documentation by the Franchise Tax Board. It is unclear what a corporation must file to be eligible for the benefits of this bill.

Under current law, certain corporations may file a certificate of dissolution at the time the request for a tax clearance certificate is submitted. In these instances, the dissolution is conditional upon the issuance of a tax clearance certificate and the date of dissolution relates back to the date the certificate of dissolution was filed. As a result, there is no income year following dissolution and this bill would not change the tax treatment of corporations that voluntarily dissolve.

It is the department’s understanding that it is the author’s intent to provide foreign corporations that wish to surrender the right to transact intrastate business in this state the same treatment as domestic corporations in regard to the effective date of dissolution as described above. Amendment 1 is provided to effectuate the author’s intent.

FISCAL IMPACT

Departmental Costs

The provisions of this bill would not significantly impact the department's costs.

Tax Revenue Estimate

Based on data and assumptions discussed below, this bill would result in revenue losses as shown below. The revenue estimate was calculated assuming this bill would be effective for requests of dissolution after December 31, 1997, with enactment assumed after June 30, 1998.

Estimated Revenue Impact of AB 27 As Amended 2/17/98 [$ In Millions]		
1998-99	1999-00	2000-01
($2)	($2)	($2)

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

Revenue Discussion

The revenue impact of this bill would be determined by the number of dissolving corporations that otherwise would pay an additional year's minimum franchise tax due to the necessity of providing additional information requested by the department.

Each year the department processes approximately 28,000 requests for certificates of tax clearance. Roughly 40% of these requests generate letters requesting additional information and/or documentation. Of these, due to delays associated with furnishing the requested additional information, about 25% pay the minimum tax of $800 for an additional year. This group would be those corporations not entitled to the conditional dissolution provided to certain corporations. Multiplying this number of taxpayers by $800 derives the estimate above.

BOARD POSITION

Pending.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 27
As Amended February 17, 1998

AMENDMENT 1

On page 4, strikeout lines 5 to 11, and insert:

(g) Notwithstanding subdivision (a), a foreign corporation, as defined in Section 171 of the Corporations Code, that files a certificate of surrender in the office of the Secretary of State pursuant to Section 2112 of the Corporation Code and that does not thereafter do business in this state shall not be subject to the minimum franchise tax for income years beginning on or after the date of that filing.